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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,641	07/15/2004	Riccardo D'Eredita	AP04-04	2462

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EXAMINER

ISABELLA, DAVID J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/501,641	Applicant(s) D'EREDITA, RICCARDO	
	Examiner DAVID J. ISABELLA	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

Claims 5 and 6 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 5 is worded as a cumulative type and/or an alternate type to include more than one set of claims. Claim 6 depends from a preceding multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 5 and 6 have not been further treated on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3/1 and 4/3/1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vyakarnam et al (6365149) in view of any of Bay et al (4650488), Schmitt (3620218) and Bowen (2127903).

Vyakarnam et al discloses a biodegradable prosthetic device comprising a tubular body having axially opposed ends and flanged at least at one of the opposed ends and at least a portion of which is produced from a material subject to biological degradation in the presence of organic liquids, characterized in that at least the portion made of material subject to biological degradation is produced from a polymeric material selected from the group of polyphosphazenes. See column 14, lines 21-39.

Note the shape disclosed by Vyakarnam includes three dimensional polygonal shapes including frusta conical and torroidal. As such, at least one end of the frusta-

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conical and toroidal shapes may be construed as terminating in a flange. However, examiner has provided secondary references to Bay et al, Schmitt and Bowen illustrating known tubular implant devices having at least one end being flanged. If not inherent in Vyakarnam et al, to manufacture a hollow tubular device having at least one end being flanged for the specific surgical purpose of the same would have been obvious from the teaching of any of the secondary references. The intended use language of the claim "for the treatment of otitis media" must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 2, 3/2 and 4/3/2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vyakarnam et al (6365149) as modified by the secondary references as applied to claim 1 above, and further in view of either of Hubbell, et al 96060582) or Tormala et al (6228111).


While Vyakarnam et al discloses bio degradation kinetics are known in the art, examiner has cited patents to Hubbell, et al and Tormala, et al to establish it is known in the art to vary the degradation rate of the implant according to specific in vivo requirements and designs, including varying rates of degradation axially along the device. If not inherent in Vyakarnam et al to design a tubular implant having varying rates of degradation along the axial length thereof would have been obvious at the time of the invention to one with ordinary skill in the art based on routine engineering manipulation/design to meet the desired surgical and in vivo requirements.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. ISABELLA
Primary Examiner
Art Unit 3738

DJI
5/4/2006